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INNOVATION AND HYBRID GENRES: DISTURBING SOCIAL RHYTHM IN LEGAL PRACTICE

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Abstract

This paper explores the non-adoption of an innovation via the concept of hybrid genres, that is digital genres that emerge from a non-digital material precedent. As instances of innovation these are often resisted because they disturb the order of activity and balance of power relations in a given situation, or require users to make conceptual and physical adaptation efforts that they consider too costly. The authors investigate such issues with a case study of the introduction of a hybrid digital genre, ODR or online dispute resolution, in legal practice.

Keywords: Online Dispute Resolution; Adoption; Innovation; Genres.

1 BACKGROUND

The context of the paper is an area of Scottish civil law, namely alternative dispute resolution (ADR), in the digital form of online dispute resolution (ODR), and within this, the area of online mediation and settlement. Alternative Dispute Resolution (ADR) has been proposed as a cost saving alternative to the traditional procedures involving courts (Motion, 2003), specifically by the European Community Directive for E-commerce (EC Directive, 2002). The process of online dispute resolution has been heavily adopted in the USA, where a commercial company, Cybersettle (Cybersettle.com), has patented an online process that endeavours to streamline interactions between claimants and insurance companies in a high volume, highly competitive market. Scotland has also seen interest in online ADR among a small group of legal practitioners, who in 1999 set up Intersettle, an online settlement space. Intersettle was set up with the support of, and funding from, eight of Scotland's leading law firms – an example of co-operation amongst adversaries that our respondents viewed as unique. These firms represented the largest workers compensation claims firm in the country, and all but one of the five largest personal injury litigation firms in Scotland. To date however, take-up of the innovative services offered to legal and insurance firms operating within the Scottish market by ODR sites such as Intersettle, the focus of our case, has been limited.

Intersettle provides parties who are in dispute with an opportunity to settle financial claims with the help of an online system for making bids. The online process is interactive, and is intended as a means of arriving at a financial settlement after issues of liability have been resolved. The Intersettle online process is not a means of deciding liability. Individuals or agents acting on their behalf can register, register a new 'case, and make a figure as a settlement bid which will then be sent via email to the other party. It is worth noting that agents are required to have the written consent of those that they purport to represent before either making, or responding to a settlement bid. By default, the bidding is undertaken blind (i.e. the neither party is aware of the figures submitted by the other), although users can alter this if they so choose. The protocol employed by the site settles the claim automatically at the mid-point of the difference between bids that fall within 15% of each other (or a percentage less than 15% as specified by the initiating party). The parties to a claim are required to complete the negotiation within a 90-day period from the initiation of the case with Intersettle. If no settlement is reached, then the parties must resort to traditional means of settling the case – hence the default position of blind bids so as not to prejudice either sides position should no settlement be reached. The merits of using Intersettle are portrayed as, 'dramatically reduc[ing] the time and expense of the settlement process', with claims being settled, 'in a matter of hours or days, rather than weeks or years'. While this sounds attractive from a process improvement perspective, this may not necessarily accord with the social practices employed by those undertaking the work of litigation settlement, a view we will discuss further in due course.

2 THE 'SETTLEMENT' GENRE

Claims settlements in Scotland are characterised by a specific timeframe, a specific division of labour, and established sequences of interaction. As a branch of legal activity, settlement is undertaken by means of a number of different types of interaction, in different modalities: paper documents, meetings and phone conversations. For the purposes of the analysis in this paper, these have been conceptualised as a communicative type (Swales, 1990), the 'settlement' genre. Like many other business and professional genres, this genre is complex, though this does not mean that it cannot be modelled. Legal discourse has emerged as a template for describing situations by means of a core sequence of statements qualified in subsidiary clauses that can capture situational or local aspects (Bhatia, 1993). By analogy, the generic process of settlement can be described as a sequence of transactional texts that are hospitable to local detail.

We suggest that genre analysis can help unravel resistance to the adoption of Intersettle, and have drawn on an extensive case study literature to 1) scope our enquiry and 2) shape our analysis. The starting point is the work of Yates and Orlikowski, who define documentary genres in a groundbreaking paper of 1992. They identify three characteristic elements: a recurrent situation, substance ('social motives...themes...topics'), and form (structural features, communication medium, and symbolism). Genres are enacted through rules which associate appropriate elements of form and substance with certain recurrent situations; to engage with a genre is to 'implicitly or explicitly draw on genre rules', and also to 'reinforce and sustain the legitimacy of those rules' (p. 301, 302). Genres exist at different levels of abstraction, and will be defined differently 'in different cultures and at different times' (p. 303). What is interesting about them is their dual status as 1) an articulation of what has emerged as appropriate behaviour (their role as a 'categorizing' device) and 2) as a prescription for activity in a community of practice (their role as a 'regulatory' device). Genres, say Yates and Orlikowski, are thus structurational devices.

ADR can be described in these terms. The 'recurrent situation' is the agreement to honour claims by means of negotiated settlement without contesting them in court. The 'substance' is the set of settlements and agreements (based on precedents and norms) that constitute the 'settlement' genre: the fees that are paid by the client, for example, are in many cases index-linked to a scale that associates levels of awards and injuries. 'Form' refers to the sequence of communicative acts and texts (oral, and written) that constitute the sociability of the genre. The 'rules' that link these elements reflect the strong ties and equally strong norms that bind professionals who operate within the Scottish legal system¹. It is thus likely that a change in any one of these elements will affect the others.

'Genre repertoire' theory, developed by Orlikowski and Yates [1994], (building on the work cited above) offers a seminal framework for the exploration of contextualised genres. In a discussion of the fitness of certain 'communicative acts' (or genres) to individual objectives, they demonstrate how observance of rules (which embrace deference and prioritising) in interactive environments sustains the effectiveness of these communicative acts: examples of office genres in their case study are the memo, the proposal, the dialogue and the ballot, all of which are reproduced in the new modality of e-mail. The process of establishing a genre repertoire, say Orlikowski and Yates, is 'largely implicit, and rooted in member's prior experiences of working and interacting. Once established, a genre repertoire serves as a powerful social template for shaping, how, why and with what effort members of a community interact to get their work done'. Genres are not static but can be reinforced or challenged and their content may thus be indeterminate. As we have seen, Orlikowski and Yates invoke structuration theory, to explain that "the enactment of genres occurs through a process of structuring" and thus members of professional groups linked by genres "are always...interpreting and improvising". We suggest that Intersettle is an example of such improvisation, but that trade-off analysis of the pros and cons by the profession to date has not led to widespread adoption of this innovation.

A further 'branch' of genre analysis that considers 'genre as social action' (Miller, 1984) may provide insight here. The settlement genre partakes of a characteristic social rhythm: once it is agreed (by means of established moves and countermoves) that a claim is legitimate, both sides may agree to negotiate on a settlement (ADR), within an agreed time frame. Within that time frame, offers will be made with a stated period for response. The process will involve face-to-face meetings (at least between the pursuer and defender and their legal representatives), and, in many cases, phone conversations between professionals in the legal and insurance sectors.² Many calls serve as social reinforcement as much as transactional communication. Bargiella-Chiappini and Nickerson (1999) summarise Charles' (1996) description of 'Old Relationship Negotiations', an interaction type that is

¹ This may be described, and explored as a sociotechnical 'black box', a point we return to below.

² Face to face meetings between legal representatives, or between lawyers and insurance agents are often not necessary, as the social/professional circles that characterise this area of the law are relatively small and tightly knit, often ensuring familiarity with firms if not individuals.

common in Scots legal practice, as follows: ‘the common aim is to create or maintain patterns of social relations (the business relationship), which is in turn achieved through social interaction – i.e. the organisation of the discourse of the negotiation’ (p. 15). This is reinforced by Loos (1999) in a description of micro-interactions where ‘the elements of interaction are not merely serially realised as ‘once and for all’ but are rather actions that are shaped and reshaped over the course of the talk...Mutual understanding is thus a methodical achievement employing the resources provided by the mechanisms of conversational interaction’. (p. 318) The negotiation of the settlement and the placing of bids rely on what Loos calls ‘tyings’ (references to what has gone before and will follow any point in the conversation) and ‘cues’, picked up by the speakers by means of intuitive conversation analysis, sensitive to nuances in tone and pitch, and to the rhythm of the conversation.

3 METHOD

From a genre analysis perspective, resistance to Intersettle as an innovation is not perplexing. A process articulated in a complex business genre that is strongly embedded in social and professional norms will pose a challenge for any designer who wishes to entice practitioners to undertake the process online. Where professional discourse is only partially or poorly understood, the challenge will be greater. To investigate resistance to Intersettle from a genre analytic perspective, we sought permission to carry out an ethnomethodological exploration of practice and perceptions of the system from one of the eight legal firms that sponsored its initial development. However, the firm in question was involved in a major re-location exercise and the timing was not appropriate. We were, however, given passwords to the Intersettle website (www.intersettle.co.uk) that allowed us to assess its current ‘discursive potential’. In addition, we have undertaken a pilot project with five key informants and thus have gained some understanding of discourse practice. The key informants were drawn from the legal and insurance professions, with four of them being closely involved with the specification and initial adoption of Intersettle.

The key informants have alerted us to larger environmental processes that may affect development and uptake of the system. To help us explore these, we have drawn on a further set of texts that link genre analysis with actor network theory, specifically work by Robinson (1997), Law (1994) and Monteiro and Hansett (1995), whose work we return to below. Our analysis thus takes account of both environmental or inter-organisational factors as well as intra-firm processes. We have focused on two areas:

Firstly, the micro-level issues surrounding the design and implementation of the ‘unadopted’ online application. Our questions here included: could an over parsimonious approach to design (technical rather than social) have led to a product that created work by requiring people to migrate across genres, rather than saving work as may have been anticipated? Could a different approach to design have improved the acceptance of the innovation? Had the play of local interests been neglected?

Secondly, the macro-level environmental factors that may inhibit or facilitate uptake. What were the expectations and assumptions of those who have ‘backed’ the system? Did they anticipate shifts in the market that did not materialise? Are there conflicting assumptions and objectives here? Would clarification and reflection on these lead to a different marketing approach that might improve acceptance? Has the influence of national and global interests been over-estimated?

Data have been gathered in unstructured in-depth interviews (each lasting at least one hour) with the five respondents. The interview protocol was loosely defined and covered the following:

- Each speaker’s account of the history of Intersettle
- Discussion of traditional discourse/work practice
- Discussion of the wider environment of the law and possible macro-level pressures to move more transactions onto digital platforms.

Respondent A is an experienced litigation partner with overseas experience in a specialist law firm dealing with claims settlement. A is one of Scotland's leading proponents of digital law, and writes regularly in a number of legal journals on different aspects of the topic. He convenes a committee on e-Commerce for the Scottish Law Society, and chair's a trade organisation that provides guidance to industry on e-business. Respondent A first became aware of ODR in 1999, going on to write a paper for a professional journal discussing the potential for this form of dispute settlement. He has been closely involved in discussions regarding the set-up and operation of Intersettle from shortly after its inception. Respondent B is the designer of the system, and is a relatively young solicitor³, who works flexibly (as a hybrid specialist combining legal and technical expertise) across three firms. He devised the first version of Intersettle while still an intern or 'trainee'⁴, having heard of Cybersettle and similar systems in the US. With the support of senior partners in the firm that sponsored his internship, he approached a member of the national enterprise agency to ask for advice on finding a technical developer, and on putting a business plan together. Three years on, he oversees the maintenance and development of the site, which is 'ticking over' at present. Respondent C is the agency representative who was responsible for the original business analysis of the Intersettle project. He has many years of experience as a business angel in the technical sector in Scotland, and is currently working as a freelance consultant. Respondent D has been a senior executive in the insurance industry, with a particular interest in claim settlement for personal injury claims. All of these interviewees know each other well, and each was aware that we had spoken to the others. Respondent E is an executive with a law firm, and is tasked with encouraging and introducing innovative practice within the firm. This respondent was thus well placed to comment upon experiences in the adoption of alternative genres. Interviews (two with Respondent A, and one each with the others) took place during late Spring and early Summer 2003.

4 UNPACKING THE GENRE AT THE MICRO LEVEL

The process of design and development appears to have been a 'textbook' case. The original concept was based on situated practice – the designer's own position as an apprentice lawyer provided both insight and access to practitioners in the claim settlement process. Each stage of the design (and subsequent coding and development) was checked with colleagues in the legal, insurance, and business sector to establish if what was proposed conformed with practice. B's approach to market analysis was also exemplary, the business plan that emerged from this at interaction proved to be sound. Financial input 'up front' from the eight founder companies, who paid for 'block time' in advance allowed the company to withstand the reversal in the dot.com economy. The prototype versions of the system were validated in a number of firms, and a road show to demonstrate the virtues of the beta version was, apparently, successful. What then was missing?

According to A, the social element was not given due attention. This is immensely important in the close-knit world of Scots law, which is less competitive than its US counterpart, where Cybersettle, the product that inspired Intersettle, was designed. Social networks and ethos in Scots law and the US are different. In addition, the initial digitisation was partial and only extended to the final component of the settlement genre – financial settlement bidding. This, according to C, disrupted the social rhythm, or social flow that characterises the transaction sequence.

In addition, the electronic version of the genre was premised on improved efficiency. As C observed, he evaluated the proposal as a commercial prospect but criteria that might validate a successful e-

³ 'Solicitor' is synonymous with the term Lawyer in some other parts of the world (e.g. USA), and refers to an individual who has been through a recognised period of education and training prior to certification by the Scottish Law Society as an approved law practitioner.

⁴ The commonest route to professional legal status in Scotland is by four year undergraduate degree, followed by a one year diploma and a two year period ('traineeship') as an apprentice in a legal firm before registration in the Law Society

commerce project are not totally appropriate to the world of Scots law where there is little pressure from clients to have greater efficiency or transparency in the settlement process. Indeed, according to informants A and C, clients expect the legal process to be slow, expect their lawyers to deal in paper and expect the process to be opaque. As B commented, “*solicitors work to a sort of rhythm*”, and observed a reluctance on the part of legal practitioners to engage in a process which may be perceived as, “*a cheapening of the skills acquired over a number of years*”. The Law is a closed shop, with comfortable working practices – there is little incentive for change in many of the small firms who handle claims. A and C (who, though not a lawyer, interviewed many practitioners as part of the promotion activities for the first version of the product) both alluded to the currently ‘inefficient’ division of labour in the traditional practice as something that suits the interests of all concerned. C reported the reaction of one eminent Glasgow lawyer who said that if he saw any of his people working on electronic stuff he would ‘have words with them’ as they should be out meeting clients. C implied that there is a fear of jobs being lost through new technology. B himself suggested that para-legals could input much of the required data, thus freeing professionals for other work.

B himself suggests that bidding per se is too restricted an application. He has subsequently introduced a current awareness function and is currently working on an expanded ‘suite’ of genre components that includes a negotiation space, email, a repository of cases (these can be cited as a warrant for the figures that are being proposed in bids) and a bulletin board. He can afford to take his time, as he is not dependent on the application for a living. In discussion with A, we suggested that in addition to an expanded portfolio of genres, meta-information to show how bids are proceeding, or to visualise the progress of a claim settlement might be useful. A agreed that such enhancement might be worth exploring, for example building upon the work of the Joint Research Centre Online Dispute Resolution Workgroup within the European Commission who have been involved in developing ODR-XML as means of open data exchange standards in the legal arena.

4.1 INTERIM MICRO-LEVEL ANALYSIS

Our initial analysis of Intersettle at the micro-level of the firm is as follows. Even though B is a practitioner, he was a fledgling practitioner when he proposed his first design. He may thus not have been aware of the full implications of the conversation that surrounded him. And though he consulted his colleagues at every stage of the initial design, he may not have been alert to discourse analysis issues that would have provided a rich picture of the ‘suite’ of interactions that was involved in settlement. A, an experienced practitioner, who is well aware of the importance of the social and human dimensions of interaction, admitted that the original system did not take adequate account of social issues, and expressed interest in a system that might capture these. Indeed, B’s recent vision of a collaborative application suite implies that he, too, believes that social enhancement may improve uptake. C, as a non-practitioner, though aware of the importance of conversation, sees it as non-productive bonding that reinforces exclusivity and sustains the opacity of the profession. He thus sees little scope for improved uptake through enhancement: only outside pressure by government may alter practice. He thought that this was unlikely to happen, as speedy resolution of claims is not a priority for the current UK government faced with serious public disquiet about health and education services.

In addition to sociability, there is the issue of disruption of work practice. If practitioners undertake most of the steps of a process by traditional means, but are invited to migrate to a new modality at the final stage, there is little incentive to do so. The introduction of an application suite may at least streamline a number of key steps, though without sociability enhancements, streamlining per se is likely to be of limited value. Disruption of workflow and its associated genres is a serious barrier (Davenport, 1998).

5 UNPACKING THE GENRE AT THE MACRO LEVEL

According to our informants, improved design, or enhanced design in themselves are unlikely to result in rapid development of a critical mass of Inter settle adopters. This may be a protracted process that requires replacing the old guard with a cohort of practitioners who are sufficiently familiar with technology to take naturally to the product. Analysis of the network at macro level, however, reveals that there are strong external forces (manifest in directives and alliances) that may force the pace of change. A, for example, believes that the European Directive on E-commerce (European Communities, 2000), in which Article 17 encourages 'the development of codes of conduct and means of alternative dispute resolution', will eventually force Scots lawyers to adopt a number of digital genres in order to comply with legislation. Similarly, any impact from the UK Government's efforts to improve the regulatory framework for e-business, in the form of The Electronic Commerce (EC Directive) Regulations 2002 (Great Britain, 2002), remains uncertain.

Further to this, there is increasing litigiousness in the UK in areas such as healthcare, and existing backlogs can only escalate. In an environment where citizens have been encouraged to interact with government services as 'consumers', there may be increasing public pressure to have claims settled in as expeditious and transparent way as possible. (C, as we note above, disagreed with this analysis, as one of the partner organisations involved with Inter settle in the early stages was the Central Legal Office (CLO) of the Scottish Health Service. This is a governmental organisation that was both subject to the performance monitoring that is prevalent in the UK public sector - and hence likely to test out potential efficiency gains - as well as having a large backlog of cases. However, even given these circumstances the organisation was not a heavy user of the pilot and Beta versions.)

A final point to note in this section is that developments in the financial sector may yet contribute to uptake of Inter settle. Two significant players, Royal Bank of Scotland and Royal Sun Alliance have recently detached themselves from their 'Scottish' branding in the interests of enhanced global presence: the former now wishes to be known as 'Royal Bank' only, and the latter has recently relocated its HQ to London, where the market is more intense. It is within this context that we note that Cybersettle, the major US online claims service provider, has recently re-activated its UK branch: as this company has secured patent rights to the 'online settlement genre' (Motion, 2003) it may be able to assert the position of its application as a de facto industry standard. Informant B revealed that he had recently met with Cybersettle representatives to discuss the position of his small Scottish variant. If an alliance emerges between Cybersettle and major financial players, then Scots practitioners may be forced to innovate, and Inter settle is the only product that is customised for Scots law. At that point, a deal with Cybersettle may be made on terms that suit Inter settle's interests. Similar scenarios were offered by informant A to support arguments for adoption to comply with industry strategies. It must be noted that A's own firm does extensive business with the global petroleum sector, and that his advocacy of the product within the profession is thus consistent with the competitive position of his company.

5.1 INTERIM MACRO-LEVEL ANALYSIS

We suggest that adoption of the innovation is more likely to benefit from moves at the macro level, than at the micro level. We make this inference on the basis of other case studies of genre development where environmental pressures led to transformation, rather than internal interventions (albeit meticulously engineered). Monteiro and Hansett (1995) provide a persuasive account of EDI (Electronic Data Interchange) in the Norwegian health sector that provides a specific illustration of a process genre and the politics underlying its introduction. In constructing the case they have drawn on Actor Network Theory (Latour and Woolgar, 1979), as it 'supports an inquiry which traces the social process of negotiating, redefining, and appropriating interests back and forth between an articulate, explicit form where they are inscribed within a technical artefact'. They show how different interest

groups (pharmacists, GPs, the government agency) jostled to have the EDI initiative implemented in ways that would favour their own position. As they observe, to build one's own advantage into a social genre is to increase one's power base: this becomes stronger as the network of those who are involved expands.

A second case that demonstrates the power of environmental factors involved one of the authors (Procter et al., 1998) and was concerned with the introduction of a digital reference service to address a critical shortage of expert resources in a local university library. The innovations embedded in a prototype, identified by means of genre analysis and endorsed by the different client groups was not adopted, though, five years later, many of these features influenced the decision to invest in a commercial 'total library system' that would link the library into a global research network. The global imperative succeeded in transforming practice where local requirements had not. Table 1 below summarises a comparative assessment of existing macro-level pressures for both Intersettle and the organisational practice involving dispute settlement.

MACRO-LEVEL INFLUENCES	INTERSETTLE: INCENTIVES FOR ADOPTION	SOCIO-CULTURAL PRACTICE
Legal - 1). EC: European Directive 00/31/EC 2). UK: Electronic Commerce (EC Directive) Regulations 2002	Intersettle already capable of meeting requirements of Article 17 of Directive which encourages ADR	The view of respondents was that the legal profession will be unlikely to proactively seek out alternatives to existing practices
Professional - Scottish Law Society (professional body) is supporting advances in technology usage in the legal profession (e.g. PKI, digital signatures)	The interaction inscribed in the Intersettle operation is amenable to the use of digital signatures by parties seeking to resolve disputes	The technologies are currently being introduced on a pilot basis - results are not yet known. The majority of law firms are small, or even micro-businesses, with limited knowledge of these technologies.
International - Cybersettle, with a patent for ODR in USA & UK, is reputedly moving back into UK market	Intersettle has a significant client base in the Scottish market, based mainly upon its added value services (e.g. court news digest service), and targeted at the distinctiveness of the Scottish legal sector.	Scotland is a relatively small market in the UK, yet with a legal system that is distinct from the rest of the UK. Scottish legal firms have a monopoly position offering services to clients wishing to operate within the Scots law framework.
Market - Increasingly litigious society - increasing case volumes. Consolidation of UK insurance businesses may see movement away from Scotland	Intersettle allows any parties to embark upon ODR. Current costing model encourages large case volumes.	No evidence found of traditional system failing to cope with volumes. Insurers require specialist legal advice for Scottish law.

Table 1. ODR and Scottish Legal Practice: A Comparative Analysis in the light of macro-level influences

The above table highlights a number of macro-level pressures within which the social practice of dispute settlement is embedded. It remains an open question as to whether one or all of these pressures (or some as yet unforeseen influence) provides the necessary impetus for encouraging increased uptake of ODR. The designers of Intersettle have inscribed a certain view of social practice within the process; for example, ideas about who it is necessary to communicate with and what it is worth communicating about in order to facilitate a settlement. By inscription we refer to the way in which Intersettle embodies future patterns of use (Akrich & Latour, 1992). We can infer that the process inscribed in Intersettle presumes not only to reflect the social ordering of those elements of the legal arena engaged in ADR, but also seeks to reinforce that social ordering. However, upon analysis it becomes apparent that Intersettle represents a challenge to the traditional genre repertoire of the legal community of practice. It may be not so much that Intersettle fails as a new modality to reproduce the settlement genre, but rather, it is too great a shift from the established social rhythm of dispute settlement. It would seem that if the macro-level elements that we identify above are to influence practitioners to adopt ODR, and Intersettle in particular, then it is to this social rhythm that attention must be given.

6 CONCLUSION

Like any complex of legal documentation, ADR (alternative dispute resolution) involves a series of moves and counter moves articulated in a series of generic interactions and exchanges. The Scottish legal world is characterised by a relatively small and closely knit group of professionals, and these interactions are embedded in a local social matrix where tacit knowledge and opportunism are important factors in achieving professional objectives. By disambiguating aspects of this process and making it more explicit, online mediation disrupts the micro level political arena. In addition, the online genre requires a stricter adherence to timelines, and physical effort in terms of keyboarding or comparable input. If, as we surmise, such factors contribute to resistance to the adoption of ODR (online dispute resolution), then it is to the social rhythm of traditional dispute resolution practice that attention must be given. Those seeking to encourage the adoption of ODR had already put effort into getting appropriate support and resources, in addition to operating in a time of moderate environmental uncertainty. Collectively, there are areas often viewed as enabling conditions for innovation adoption (Angle, 1989). The proposition that ODR represents a hybrid genre intimates that much work would need to be done if adoption is to be realised. It would seem that legal practitioners will have to be convinced not only that there is contingent specificity (McLoughlin, 1999) that is worth embedding in the dispute resolution context, but also that there is some imperative that makes adoption of this hybrid genre worthwhile, or perhaps necessary.

Our initial assessment of resistance to Intersettle using genre analysis suggests that this approach can uncover details of discourse and practice that may explain lack of uptake of this innovation. In addition, they provide pointers for areas of design that can be addressed to enrich the sociability of the online settlement genre. To validate these suggestions, further work will be done in an ethnographic study of additional key informants working in legal firms who specialise in claims settlement to 1) explore current discursive practice in detail; 2) explore current perceptions of the mediation process; 3) explore current perceptions of existing online mediation tools and 4) assess enhancements to the current online application that attempt to overcome factors that contribute to resistance, by, for example, using visualisation to capture argumentation or map social networks, and supporting audio to facilitate conversation.

In addition to providing insight into the Scottish case study, we suggest that the study will be a useful contribution to our understanding of innovation adoption both at a methodological and a practical

level. It will enhance understanding of how genres are appropriated in professional practice, and thus improve our conceptualisation of ways in which digital genres shape work.

REFERENCES

- Akrich, M. and Latour, B. (1992) A Summary of a Convenient Vocabulary for the Semiotics of Human and Nonhuman Assemblies (Eds. Bijker, W. E. and Law, J.), *Shaping Technology/Building Society: Studies in Sociotechnical Change*, MIT Press, Cambridge, pp. 259-264.
- Angle, H.A. (1989) Psychology and organizational innovation. In Van de Ven, A., Angle, H.A., Poole, M.S. (Eds.) *Research on the management of innovation: The Minnesota studies*. (pp.135-170). New York: Ballinger/Harper Row.
- Bargiela-Chiappini, F. and Nickerson, C. (1999) Business writing as social action. In F. Bargiela-Chiappini, and C. Nickerson (Eds.) *Writing business: genres, media and discourses* (pp. 1 – 32). Harlow: Pearson Education Limited.
- Bergquist, M. and Ljungberg, J. (1999) Genres in action: negotiating genres in practice. In *Proceedings of the 32nd Annual Hawaii International conference on System Sciences , Digital documents track (HICSS-32)*. Los Alamitos, CA: IEEE Computer Society Press, 1999. (Available in CD-ROM version).
- Bhatia, V. (1993) *Analysing genre: language use in professional settings*. London: Longman.
- Charles, Mirjliisa. (1996) Business negotiations: interdependence between discourse and the business relationship. *English for Specific Purposes*. 15 (1), 19 – 36.
- Cybersettle. At www.cybersettle.com
- Davenport, E. (1999) *Implicit Orders: Documentary Genres and Organizational Practice*. In *Proceedings of the 10th SIGCR Classification Workshop*, Washington, October 1999.
- European Communities. Commission. *Directive on Electronic Commerce Luxembourg: Office for Official Publications of the European Communities*, 2000 (Directive, 2000/31/EC)
- Great Britain. Parliament. House of Commons. *The Electronic Commerce (EC Directive) Regulations 2002*, The Stationary Office. 2002. (Statutory Instrument No. 2002/1313).
- Intersettle. At www.intersettle.co.uk
- Latour, B., Woolgar, S. (1979). *Laboratory life: the social construction of scientific facts*, Beverly Hills: Sage.
- Loos, E. (1999) Intertextual networks in organisations: the use of written and oral business discourse in relation to context. In F. Bargiela-Chiappini, and C. Nickerson (Eds.) *Writing business: genres, media and discourses* (pp. 315 – 332). Harlow: Pearson Education Limited.
- McLoughlin I (1999) *Creative Technological Change: The shaping of technology and organisations*. London: Routledge.
- Miller, C. (1984) Genre as social action, *Quarterly Journal of Speech*. 70, 151 – 167.
- Monteiro, E. and Hansett, O. (1995). Social shaping of information infrastructure: on being specific about the technology. In W. Orlikowski, G. Walsham, M. R. Jones, & J. I. DeGross, (Eds.) *Information technology and changes in organizational work. Proceedings of the IFIP WG8.2 working conference on information technology and changes in organizational work*, December 1995 (pp. 325-343). London: Chapman and Hall.
- Motion, P. Presentation at an AHRB seminar, January 26 2003. University of Edinburgh.
- Orlikowski, W. And Yates, J. (1994). Genre repertoire: the structuring of communicative practices in organizations, *Administrative Sciences Quarterly*, 33, 541 - 574.
- Procter, R., Goldenberg, A., Davenport, E., Burnhill, P. and Cannell, S. (1998). Genres in support of collaborative retrieval in the virtual library, *Interacting with Computers*, 10, 157-175.
- Robinson, M. (1997). As real as it gets....": taming models and reconstructing procedures. In G.C. Bowker, S. L. Star, W. Turner and L. Gasser (Eds). *Social science, technical systems, and cooperative work: beyond the great divide* (pp. 257 - 274). Mahwah, NJ: Lawrence Erlbaum Associates.

- Swales, J. (1990) *Genre analysis: English in academic and research settings*. Cambridge: Cambridge University Press.
- Yates, J., Orlikowski, W.J. (1992). Genres of organizational communication: a structurational approach to studying communication and media, *The Academy of Management Review*, 17 (2), 99-326.
- Yates, J., Orlikowski, W. and Rennecker, J. (1997). Collaborative genres for collaboration: genre systems in digital media. In R. Sprague (Ed.). *Proceedings of the Thirtieth Hawaii International Conference on System Sciences (HICSS-30) Volume VI. Digital Documents Track* (pp. 50-59). Los Alamitos, CA: IEEE Computer Society Press.
- Yates, J., Sumner, T.R. (1997). Digital genres and the new burden of fixity. In R. Sprague (Ed.) *Proceedings of the Thirtieth Hawaii International Conference on System Sciences (HICSS-30). Volume VI. Digital Documents Track*, (pp. 3 - 12). Los Alamitos, CA: IEEE Computer Society Press.